

**A LIBRARY USE, OPERATIONS AND MAINTENANCE AGREEMENT
BETWEEN THE CITY OF LAFAYETTE AND
CONTRA COSTA COUNTY
FOR THE LAFAYETTE LIBRARY & LEARNING CENTER**

This Agreement ("Agreement") is made and entered into the 13th day of January 2004 by and between the City of Lafayette ("City") and Contra Costa County ("County"), a political subdivision of the State of California.

RECITALS

- A. The Lafayette Library is owned by Contra Costa County. The City and County are parties to that certain agreement dated January 16, 1996 regarding the City's purchase of the Lafayette Library from the County by the year 2011.
- B. The County and City agree that the existing library is outdated and inadequate for the current and future library needs of area served by this library.
- C. The City intends to apply for funding under the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2000 ("Act"). The funding would be used to construct a new Lafayette Library, known as the Lafayette Library & Learning Center, at the site of the existing Veterans Memorial Building.
- D. The County and City desire to set forth their agreement that the Lafayette Library & Learning Center will be maintained and operated for at least forty years after the opening of the Lafayette Library & Learning Center.

AGREEMENT

- 1. Term. This Agreement shall become effective immediately upon and shall continue for a term of forty years from the date of the opening of the Lafayette Library & Learning Center. Should the City not receive a grant on or before December 31, 2004, this Agreement shall terminate on December 31, 2004.
- 2. Ownership of the Lafayette Library & Learning Center. The City agrees to own the Lafayette Library & Learning Center site, building, furnishings, fixtures and equipment.
- 3. Operations, Maintenance and Management of the Lafayette Library & Learning Center. The County agrees to operate the Lafayette Library & Learning Center and to provide staff training, professional development, ongoing collection development, long-range planning and implementation of the Library Plan of Service. The City agrees to provide funding for an increased level of library services, including staffing beyond what is currently provided, to meet the service goals of the Lafayette Library & Learning Center.

4. Cooperative Programs with Schools. The County and City agree that the cooperative programs, as described in the *Joint Venture Cooperative Agreement Among the Contra Costa County Library, the City of Lafayette, the Lafayette School District, and the Acalanes Union High School District for the Lafayette Library & Learning Center* ("Cooperative Agreement") which is incorporated herein by reference, shall be conducted at the Lafayette Library & Learning Center for a minimum of twenty years from the opening date of the Lafayette Library & Learning Center.
5. Contingent Operation of the Lafayette Library & Learning Center. Should for any reason the County and City terminate the Cooperative Agreement during the term of this Agreement, the City agrees to maintain and operate the Lafayette Library & Learning Center as a public library for the term of this Agreement.
6. Incorporation of State Law. Education Code Section 19999 and Section 20440(e)(3)(G) of Title 5 of the California Code of Regulations, which require the Lafayette Library & Learning Center to be used to provide public library direct services for forty years are hereby incorporated by reference herein.
7. Legal Relations and Responsibilities. It is understood and agreed that neither the County nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by the City under or in connection with any work, authority or jurisdiction delegated to the City under this Agreement. The City shall defend, indemnify, save and hold harmless the County, its governing body, officers, agents and employees from all claims, suits or action of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by the City under or in connection with any work, authority or jurisdiction delegated to the City under this Agreement.

It is understood and agreed that neither the City nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by the County under or in connection with any work, authority or jurisdiction delegated to the County under this Agreement. The County shall defend, indemnify, save and hold harmless the City, its governing body, officers, agents and employees from all claims, suits or action of every name, kind and description brought for or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by the County under or in connection with any work, authority or jurisdiction delegated to the County under this Agreement.

8. Notices. All notices required or provided for under this Agreement shall be in writing and either (i) delivered in person and sent by facsimile or (ii) sent by certified mail, postage prepaid, return receipt requested and facsimile. Notice shall be deemed effective on actual receipt or upon refusal of delivery. Notices shall be delivered or mailed to the other party as indicated below:

Notice to County:

Contra Costa County Librarian
1750 Oak Park Blvd.
Pleasant Hill, CA 94523
Facsimile: 925-646-6461

Notice to City:

City Manager
3675 Mount Diablo Blvd., Suite 210
Lafayette, CA 94549
Facsimile: 925-284-3169

The address or facsimile number of any party or person herein designated to receive notices may be changed by delivering or mailing and faxing notice of such new address or facsimile number to other parties in the manner specified for the giving of notice.

9. Time is of the Essence. Time is of the essence for this Agreement. Each time period specified herein for performance of any obligation or the accrual of any right forms a material part of the consideration for the execution of this Agreement.
10. Covenant of Good Faith and Fair Dealing. The City and County agree that each shall at all times act in good faith in order to carry out the terms of this Agreement and shall do nothing contrary to or to avoid the spirit and intent of this Agreement.
11. Entire Agreement. This Agreement constitutes the entire Agreement between the County on one side and the City on the other with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties to supercede all previous negotiations and agreements between the County on one side and the City on the other.
12. Amendments. This Agreement may only be amended by a written instrument signed by both parties hereto.
13. Rules of Interpretation. This Agreement and each of its provision shall be deemed to be jointly prepared by the parties hereto, and no party shall claim the benefit of any rule of interpretation by this State, whether by stature or otherwise, which would cause ambiguities in this Agreement or any of its provisions to be interpreted against the party who draft it or whose attorney drafted it.
14. Headings. The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms or provisions of this Agreement.
15. Waiver of Breach; Notice of Alleged Breach. The waiver by one party hereto of a breach of any term or condition of this Agreement by another party shall not be

deemed a waiver of any subsequent breach of the same or other term or condition of this Agreement, with any subsequent breach by any party being independent of any breach which may have prior thereto. Any party claiming that another party is in breach of this Agreement shall provide notice of the alleged breach in the manner required in Section 11 herein. The party alleged to be in breach shall have thirty days to cure the breach unless a different time period is specified in this Agreement for the particular act or breach.

16. Governing Laws, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties hereby stipulate that any court of competent jurisdiction located within Contra Costa County, State of California shall be the proper court in which to commence an action to enforce the terms of this Agreement.
17. No Third Party Beneficiary; Defense of Agreement. This Agreement is intended solely for the benefit of the parties hereto and shall not be construed to create any rights for any other person or entity. If any third party brings a legal action or proceeding against any party to this Agreement in order to attack, set aside, void or annul this Agreement or any of its terms or provisions, then the parties shall join and cooperate fully in the defense of such action.
18. Partial Invalidity and Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, then the remaining provisions shall nonetheless continue in full force and effect, without being impaired or invalidated in any way, with such invalid, void or unenforceable provision being severable from the remainder of this Agreement.
19. Successors and Assigns; Restrictions on Transfer and Assignment. This Agreement shall inure to the benefit of and bind the successors and assigns of the parties. All terms and provisions of this Agreement are fully enforceable by and against such successors and assigns.
20. Warranty of Capacity to Execute. Each party warrants that the undersigned has or have the capacity to sign this Agreement on their or its behalf. Specifically, the Board of Supervisors has authorized its County Administrator or Designee to sign this Agreement on behalf of the County, and the Lafayette City Council has authorized its City Manager to sign this Agreement on behalf of the City.
21. Original Counterparts. This Agreement shall be executed in three original counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CONTRA COSTA COUNTY
a political subdivision of the State of California

Dated: January 10, 2004

/s/

By: Anne Cain
Its: County Administrator or Designee

Dated: January 14, 2004

/s/

By: Steven B. Falk
Its: City Manager or Designee

APPROVED AS TO FORM:

County Counsel

/s/

By: _____

REVIEWED BY:

City Attorney

/s/

By: _____